Pattern Makers' League of North America, AFL-CIO, and its Rockford and Beloit Associations *and* Rockford-Beloit Pattern Jobbers Association. Case 33-CB-1132

December 16, 1982

DECISION AND ORDER

On November 21, 1978, Administrative Law Judge Gerald A. Wacknov issued the attached Decision in this proceeding. Thereafter, the Respondents, Pattern Makers' League of North America, AFL-CIO, Rockford Association, and Beloit Association, filed exceptions and a supporting brief and the General Counsel filed limited exceptions and a brief in support thereof, as well as a brief otherwise in support of the Administrative Law Judge's Decision.

On December 12, 1979, the Board, having determined that this and another case,[1] involving the right of a labor organization to impose restrictions on a member's right to resign, presented issues of importance in the administration of the National Labor Relations Act, as amended, scheduled oral argument for January 16, 1980. Thereafter, on January 16, 1980, Respondents, the General Counsel, the Charging Party, and the American Federation of Labor and Congress of Industrial Organizations,[2] presented their oral arguments before the Board.

The Board has considered the record and the attached Decision in light of the exceptions, briefs, and oral arguments, and, for the reasons stated below, has decided to affirm the rulings, findings, and conclusions of the Administrative Law Judge,[3] as modified herein.

The principal issue in this case involves the question of whether Respondents violated Section 8(b)(1)(A) of the Act by imposing fines on members who tendered resignations and returned to work during the course of a strike in apparent contravention of Respondents' rule prohibiting resignations during a strike or lockout or when one appeared imminent.

The pertinent facts reveal that, in May 1976, Respondents, in an attempt to end what they viewed as "a regular pattern of strikebreaking by employers," adopted and ratified an amendment to their constitution, known as League Law 13, which provided that "no resignation or withdrawal from an Association, or from the League, shall be accepted during a strike or lockout, or at a time when a strike or lockout appears imminent." Thereafter, on or about May 5, 1977, Respondents commenced a strike against Rockford-Beloit Pattern Jobbers Association, a multiemployer association, and its individual members which culminated on December 19, 1977, with the execution of a collective-bargaining agreement that contained, among other things, a union-security clause. During the course of that strike, 10 employees tendered their resignations from the Respondent Associations[4] and returned to work. By letters dated January 26, 1978, Respondents notified these employees that their resignations were in violation of League Law 13 and would not be accepted; they further informed them that they were being fined for returning to work during the strike.

The General Counsel contends that League Law 13 unlawfully intrudes into the rights guaranteed to employees by Section 7 of the Act and that, consequently, the fines imposed thereunder are unlawful and in violation of Section 8(b)(1)(A) of the Act. Respondents, on the other hand, assert that League Law 13 constitutes a valid exercise of their right to enact internal union rules governing the acquisition and retention of membership, as set forth in the proviso to Section 8(b)(1)(A). They therefore argue that the fines imposed on those individuals who resigned and returned to work during the strike in violation of such rule were lawful. The Administrative Law Judge found no merit to Respondents' contention. Rather, he noted that "[t]he blanket prohibition of resignations or withdrawals during strikes embodied in League Law 13 permits of no exceptions or qualifications, obviously according no weight whatsoever to the competing considerations often confronting striking employees." He thus concluded that League Law 13 constitutes "an impermissible encroachment on employees' statutory right to resign union membership and that the

[1] *Machinists Local 1327, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 115 (Dalmo Victor)*, 263 NLRB 984 (1982).

[2] The American Federation of Labor and Congress of Industrial Organizations appeared as *amicus curiae* and argued orally on behalf of Respondents' position.

[3] The Administrative Law Judge, *inter alia*, found that Respondents had violated Sec. 8(b)(1)(A) of the Act by threatening employees with physical harm and loss of accrued pension benefits if they crossed the picket line, and had violated Secs. 8(b)(2) and 8(b)(1)(A) by imposing a fine and excessive fees and dues on employee William Kohl after expelling him from membership for having submitted his resignation. No exceptions were taken to these findings.

The Administrative Law Judge, however, also found that Respondent Beloit Association had not sought to have employee John Nelson discharged for failing to comply with the terms of a union-security agreement, as alleged by the General Counsel. The General Counsel has excepted to this finding. For the reasons more fully discussed, *infra*, we find merit to the General Counsel's exception.

[4] The record reveals that employees John Cammilleri, Donald Carlson, Jerry Mikkelson, Lawrence Wilkins, Pierre LaBounty, Fred Bull, Ralph Hopper, David Darling, and Lannie McDonald tendered their resignations to Respondent Beloit and employee Jon Wenger tendered his resignation to Respondent Rockford. As noted in fn. 3, *supra*, employee Kohl also tendered his resignation during the strike, was expelled from the Union, and was subsequently fined. As stated, however, no exceptions were taken to the Administrative Law Judge's findings concerning Kohl.

fines imposed thereunder are in violation of the Act."

The Administrative Law Judge's findings in this regard are in substantial accord with the Board's recent holding in *Dalmo Victor, supra*, which, as noted, involved a similar issue. In *Dalmo Victor*, the Board was asked to determine the validity of a provision in a union's constitution which prohibited members from resigning during the course of a strike or within 14 days preceding its commencement. The Board there found that provision to be invalid and unenforceable.[5] In so doing, the Board noted that in *Scofield, et al.* v. *N.L.R.B.*, 394 U.S. 423 (1969), the Supreme Court stated that union members must be free to leave a union to escape membership conditions which they consider onerous. Additionally, the Board noted that in *N.L.R.B.* v. *Granite State Joint Board, Textile Workers Union of America, Local 1029, AFL-CIO [International Paper Box Machine Co.]*, 409 U.S. 213 (1972), the Supreme Court "recognized that there may be circumstances under which a member might feel compelled to resign during a strike." Finding nothing in the *Scofield* or other subsequent Supreme Court decisions to suggest that a member's right to resign could be limited to nonstrike periods only and finding that a reading of the *Scofield* and *Granite State* decisions lead to the inescapable conclusion that "a member's right to resign from a union applies both to strike and nonstrike situation," the Board held that "a union rule which limits the right of a union member to resign only to nonstrike periods constitutes an unreasonable restriction on a member's Section 7 right to resign."[6] Applying its holding to the rule in question, the Board concluded that, since the rule failed to provide for resignations during a strike, it was neither valid nor enforceable. It accordingly found the fines imposed thereunder to be in violation of Section 8(b)(1)(A) of the Act.

In the instant case, Respondent's League Law 13 suffers from the same infirmity as did the rule in *Dalmo Victor*. While League Law 13 apparently provides for resignations during nonstrike periods, it clearly prohibits any such resignations once a strike has begun or when one "appears imminent." Under the Board's holding in *Dalmo Victor*, League Law 13 can be construed as neither valid nor enforceable. Consequently, we find, in agreement with the Administrative Law Judge, that the fines imposed pursuant to League Law 13 were unlawful and violative of Section 8(b)(1)(A) of the Act.[7]

We also find, contrary to the Administrtive Law Judge, that Respondent Beloit Association unlawfully sought to have employee John Nelson discharged from his position with Atlas Pattern Works (hereinafter Atlas) for failing to comply with the provisions of the union-security agreement. The record in this regard reveals that Nelson began working for Atlas in March 1977, and never became a member of Respondent Beloit, which represented Atlas' employees. On or about January 14, 1978, Nelson tendered to Respondent Beloit a check representing union dues for the month of January 1978.[8] However, on January 17, 1978, Respondent Beloit returned the check to Nelson with a letter stating that, since he was not a union member, it could not accept dues from him which he did not owe. That same day, Respondent Beloit sent Atlas a letter informing it that Nelson had failed to comply with the terms of the union-security agreement that went into effect on December 19, 1977, and requested that Atlas "take appropriate action to rectify this situation."[9]

The General Counsel alleges that Respondent Beloit's letter to Atlas concerning Nelson constituted a request for his discharge for failing to meet his obligations under the union-security agreement and that Respondent had breached its fiduciary duty to inform employees of their obligations under such agreements. The Administrative Law Judge disagreed with the General Counsel noting that the letter to Atlas was sent 3 days before Nelson's discharge could actually have been requested under the agreement and further noting that no attempt to discharge Nelson or interfere with his job tenure was made upon the expiration of the required period. He also found that Respondent Beloit had

[5] Member Jenkins dissented.

[6] *Id.* 986. In *Dalmo Victor*, the Board also found that, while a member has a Sec. 7 right to resign from a union and return to work during a strike, "a union's need to reflect the continuing will of a majority of its members, especially during a strike, reflects not only a legitimate union interest but also implements a right inherent in the statutory scheme of our labor laws." In view of the competing interests involved, neither of which was deemed to be absolute, the Board found it "salutary to set forth a general rule for the behavior of parties in this area." Thus, it stated that a rule restricting a member's right to resign for a period not to exceed 30 days (unless extraordinary circumstances warranted a longer period) after the tender of resignation would be considered reasonable. While concurring that the provision in question constituted an unreasonable restriction on a member's right to resign, Chairman Van de Water and Member Hunter would find that any restriction on a member's right to resign, including a 30-day limitation, would be unreasonable. See their separate opinion in *Dalmo Victor, supra*.

[7] Although we agree with the Administrative Law Judge that League Law 13 is unenforceable, we find his recommendation that that provision be expunged from Respondents' constitution to be inappropriate and shall accordingly delete such language from his recommended Order.

[8] Under the terms of the union-security agreement executed on December 19, 1977, employees were required to become members within 30 days of employment.

[9] An identical letter concerning Kohl's failure to comply with the union-security agreement was sent by Respondent Beloit to Atlas just 3 days before the Nelson letter. The Administrative Law Judge found that that letter amounted to an implied request for Kohl's discharge and violated Secs. 8(b)(2) and 8(b)(1)(A) of the Act. As noted in fn. 3, *supra*, no exceptions were taken to this finding.

not breached any fiduciary duty owed to Nelson and concluded that it had not violated Sections 8(b)(2) or 8(b)(1)(A) of the Act, as alleged. As noted, we disagree with that finding.

It is well settled that a union seeking to enforce a union-security provision against an employee has a fiduciary duty to inform that employee of his obligations so that the employee may take the steps necessary to protect his job.[10] That duty, the Board has held, requires that a union provide the employee with "a statement of the precise amount and months for which dues [are] owed, as well as an explanation of the methods used in computing the amount," plus "an opportunity to make payment."[11] As evident from the above facts, Nelson, although apparently unaware or uncertain of what his obligations were under the union-security agreement, nevertheless made a good-faith effort to comply with those obligations by tendering his dues to Respondent Beloit on January 14. However, instead of advising Nelson of the extent of his obligations under the new contract when it rejected his tender of dues, Respondent Beloit chose merely to inform him that he was not a union member and that consequently he did not owe any dues.[12] Under these circumstances, we find that Respondent Beloit has not fulfilled its fiduciary duty of informing Nelson of his obligations under the union-security agreement executed on December 19, 1977.[13]

Further, we find that Respondent Beloit's letter to Atlas requesting that it take "appropriate action" concerning Nelson's failure to join its Association constituted a request for his discharge. In this respect, we note, as previously stated, that an identical letter concerning Kohl's failure similarly to comply with the terms of the union-security agreement amounted to an implied request for his discharge. We see no reason why the Nelson letter should be construed any differently from the Kohl letter, especially when viewed in light of Respondent Beloit's breach of its fiduciary duty owed to Nelson. For the above-stated reasons, we find that Respondent Beloit unlawfully sought to have Nelson discharged and in so doing violated Sections 8(b)(2) and 8(b)(1)(A) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondents, Pattern Makers' League of North America, AFL-CIO, Washington, D.C., Rockford Association, Rockford, Illinois, and Beloit Association, Beloit, Wisconsin, their officers, agents, and representatives, shall:

1. Cease and desist from:

(a) Giving force or effect to League Law 13.

(b) Restraining or coercing employees who have resigned from Respondents by imposing fines on such employees for working during a sanctioned strike.

(c) Causing or attempting to cause Atlas Pattern Works or any other employer to discharge or otherwise discriminate against any of its employees for failure to comply with the terms of a union-security clause without adequately advising them of their obligations, in violation of Section 8(a)(3) of the Act.

(d) Imposing fines and other penalties upon former members for conduct in which they engaged after their effective resignation from Respondents, as conditions of regaining union membership under the provisions of a union-security clause, and attempting to cause an employer to seek an employee's compliance therewith.

(e) Threatening employees with physical harm, property damage, a loss of pension benefits, or any other reprisals for working during the course of a sanctioned strike.

(f) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act, except to the extent that such rights may be affected by an agreement requiring membership in a labor organi-

[10] *Chauffeurs, Salesdrivers & Helpers Union, Local 572, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Ralphs Grocery Company)*, 247 NLRB 934 (1980).

[11] *Id.* at 935.

[12] It is apparent from Respondent Beloit's letter to Atlas, when viewed in light of the former's refusal to accept Nelson's tender of dues, that Respondent Beloit equated Nelson's continued employment with Atlas, under the terms of the union-security clause, with his becoming a full member of its Association. However, the Board in this respect has long held that "while contracts requiring membership as a condition of employment are lawful within the meaning of the proviso to Section 8(a)(3), a union cannot lawfully compel . . . the discharge of an employee except for his failure to pay required dues and initiation fees." *Hershey Foods Corporation*, 207 NLRB 897 (1973).

[13] Even assuming, *arguendo*, that Nelson knew of his obligations as of May 1977 under the prior contract, as alleged by Respondent Beloit, there was nevertheless a continuing obligation on Respondent's part to notify Nelson of his obligations under the new contract since "an employee is not presumed to be on notice as to the extent of his obligations to the union during successive terms." See *Conductron Corporation, a subsidiary of McDonnell Douglas Corporation*, 183 NLRB 419, 425 (1970), citing *N.L.R.B. v. International Union of Electrical, Radio, and Machine Workers, AFL-CIO [General Motors Corporation]*, 307 F.2d 679 (D.C. Cir. 1962).

Moreover, in light of Respondent Beloit's rejection of Nelson's tender of dues on the ground that he had no dues obligations, we find that Respondent Beloit was thereafter estopped from demanding that Nelson be discharged for failing to meet his obligations under the union-security agreement. As previously noted, Respondent Beloit improperly equated continued employment under that agreement with the obtainment of full membership in its organization. Thus, it is clear that, even if Nelson had known of his obligations under the contract, Respondent Beloit would nevertheless have violated the Act, as alleged, by unlawfully requiring, as a condition of employment, that Nelson become a full, rather than a financial core, member of its Association.

zation as a condition of employment as authorized in Section 8(a)(3) of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Rescind the fines levied against employees for their post-resignation activity of working during the course of a strike, and notify said employees that such fines have been rescinded.

(b) Rescind the fines, excessive back dues, and readmission fee imposed upon William Kohl as a condition of his regaining membership in the Beloit Association, and so notify Kohl of such action.

(c) Expunge from the records of said employees any reference to fines levied against them for their post-resignation conduct.

(d) Notify Atlas Pattern Works, in writing, with copies to employees William Kohl and John Nelson, that they have no objection to the continued employment of said employees.

(e) Post at their business offices and meeting halls copies of the attached notice marked "Appendix."[14] Copies of said notice, on forms provided by the Regional Director for Region 33, after being duly signed by authorized representatives of Respondents, shall be posted by Respondents immediately upon receipt thereof, and be maintained by them for 60 consecutive days thereafter, in conspicuous places, including all places where notices to members are customarily posted. Reasonable steps shall be taken by Respondents to ensure that said notices are not altered, defaced, or covered by any other material.

(f) Mail to the Regional Director for Region 33 sufficient signed copies of said notice for posting by employer-members of the Rockford-Beloit Pattern Jobbers Association, if the employers are willing, in places where notices to employees are customarily posted. Said copies, after being duly signed by Respondents' authorized representatives, shall be returned forthwith to the Regional Director.

(g) Notify the Regional Director for Region 33, in writing, within 20 days from the date of this Order, what steps Respondents have taken to comply herewith.

MEMBER FANNING, concurring and dissenting in part:

I agree with the majority in all respects save that I do not find that Respondents violated the Act by "giving force or effect to League Law 13," which simply prohibits resignations from the League during a strike or when one is imminent. As I explained in *Dalmo Victor*,[15] a labor organization's restrictions on resignation are relevant in cases involving union discipline of employees only to the extent that the labor organization defends that the employee is a union member and had consented to be bound to union rules. Where the restriction is not a valid one—and I agree that League Law 13 is not—it may not be relied upon as a bar to resignation; in that case, the labor organization cannot defend its action as one taken against a member.

The League law does not, however, have any impact on the employment relationship and, therefore, does not violate any law or policy this Agency is charged with enforcing. It is a procedural rule purporting only to regulate the release of a member from the Union's rolls.

Neither Section 8(b)(1)(A) nor the Act in general regulates the purely internal affairs of labor organizations.[16] The proviso to Section 8(b)(1)(A) stakes out the limit of Federal restriction in this area and leaves to labor organizations the right to police their rolls.[17] Strictly internal union discipline, that is discipline which does not directly affect the employment relationship, is not regulated by the National Labor Relations Act unless it is contrary to an overriding policy in the labor laws.[18] Indeed, our jurisdiction reflects this: It requires an employer's involvement in commerce even in cases where a labor organization is the respondent.

There is no basis for concluding that a union rule, which on its face only regulates union membership rolls, may not be maintained without violating the Act. League Law 13 has no effect on the employment relationship, and its maintenance should not be unlawful simply because the League sought to rely upon it to show a binding union-member compact which had, in law, been vitiated.

MEMBER JENKINS, dissenting in part:

I join in all my colleagues' findings except their affirmance of the Administrative Law Judge's finding that the fines imposed on the 10 employees who resigned from Respondents during the strike

[14] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

[15] *Machinists Local 1327, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 115 (Dalmo Victor)*, 263 NLRB 984, 986, fn. 13 (1982).

[16] Before the 1959 Landrum-Griffin amendments, which come under the jurisdiction of the Department of Labor, the Supreme Court observed that "the protection of union members in their rights as members from arbitrary conduct by unions and union officers has not been undertaken by federal law, and indeed the assertion of any such power has been expressly denied." *International Association of Machinists* v. *Gonzales*, 356 U.S. 617, 620 (1958).

[17] *Local 283, United Automobile, Aircraft and Agricultural Implement Workers of America, UAW-AFL-CIO (Wisconsin Motor Corporation)*, 145 NLRB 1097, 1133 (1964).

[18] *Scofield, et al.* v. *N.L.R.B.*, 394 U.S. 423 (1969).

and crossed Respondents' picket lines to return to work violated Section 8(b)(1)(A) of the Act.

For the reasons set forth in my separate dissenting opinions in *Machinists Local 1327, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 115 (Dalmo Victor)*, 263 NLRB 984 (1982), and 231 NLRB 719 (1977), I would find that League Law 13, as applied herein, is a reasonable and narrow restriction on the employees' right to resign their union membership, and is within the ambit of the Union's control over its internal affairs. Accordingly, I also would find that the fines imposed pursuant to League Law 13 on the 10 employees who crossed the Unions' picket lines were lawful and not in violation of the proscriptions of Section 8(b)(1)(A) of the Act.

APPENDIX

NOTICE TO MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT give force or effect to League Law 13.

WE WILL NOT impose fines and other penalties upon former members for conduct in which they engaged after resigning their membership from the League or its Associations.

WE WILL NOT impose such fines and other penalties upon former members for conduct in which they engaged after resigning their membership, as conditions of regaining union membership under the provisions of a valid union-security clause, and WE WILL NOT attempt to cause employers to seek employees' compliance therewith.

WE WILL NOT cause or attempt to cause employers to discharge or otherwise discriminate against employees who have not complied with the terms of a union-security agreement without first adequately informing employees of their obligations under said agreement.

WE WILL NOT threaten employees with physical harm, property damage, a loss of pension benefits, or any other reprisals for working during the course of a sanctioned strike.

WE WILL NOT in any like or related manner restrain or coerce employees in the exercise of their Section 7 rights, except to the extent that such rights may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8(a)(3) of the Act.

WE WILL rescind the fines and/or other similar penalties levied against employees who effectively resigned during the strike and returned to work and will notify them that such fines and penalties have been rescinded.

WE WILL rescind the fine, excessive back dues, and readmission fee imposed upon William Kohl as a condition of his regaining membership in the Beloit Association, and so notify Kohl of such action.

WE WILL expunge from the records of said employees any reference to fines levied against them.

WE WILL notify Atlas Pattern Works, in writing, that we have no objections to the continued employment of employees William Kohl and John Nelson and shall send copies of said letter to the above-mentioned employees.

PATTERN MAKERS' LEAGUE OF NORTH AMERICA, AFL-CIO, AND ITS ROCKFORD AND BELOIT ASSOCIATIONS

DECISION

STATEMENT OF THE CASE

GERALD A. WACKNOV, Administrative Law Judge: Pursuant to notice, a hearing with respect to this matter was held before me in Rockford, Illinois, on August 16, 1978. The charge was filed on January 23, 1978, by Rockford-Beloit Pattern Jobbers Association (herein called the Pattern Jobbers Association), and a complaint and notice of hearing was issued on March 7, 1978, alleging a violation by Pattern Makers' League of North America, AFL-CIO, and its Rockford and Beloit Associations (herein called Respondent Unions) of Section 8(b)(1)(A) and (2) of the National Labor Relations Act, as amended (herein called the Act). On June 7, 1978, an amendment to the complaint was issued, alleging additional violations of Section 8(b)(1)(A) of the Act, and at the outset of the hearing the complaint was again amended to add an additional similar allegation. Respondents' answers to the complaint and amendments thereto deny the commission of any unfair labor practices.

The parties were afforded a full opportunity to be heard, to call, examine and cross-examine witnesses, and to introduce relevant evidence. Post-hearing briefs have been filed on behalf of the General Counsel and Respondents.

Upon the entire record and based upon my observation of the witnesses and consideration of the briefs submitted, I make the following:

FINDINGS OF FACT

I. JURISDICTION

The Pattern Jobbers Association is comprised of approximately 11 employer-members engaged in the manufacture and sale of patterns for castings, with facilities located throughout the Rockford, Illinois, and Beloit, Wis-

consin, vicinities. The Pattern Jobbers Association exists for the purpose, among others, of engaging in multiemployer collective bargaining with the Respondent Unions. In the course and conduct of their business operations, employer members of the Pattern Jobbers Association, collectively and in some cases individually, annually sell and ship finished products valued in excess of $50,000 from their various facilities to points outside the States of Illinois and Wisconsin, and annually purchase and cause to be transferred and delivered to their various Illinois and Wisconsin facilities goods and materials valued in excess of $50,000 which are transported to said facilities directly from other States. It is admitted and I find that the Pattern Jobbers Association and its employer members are, and have been at all times material herein, employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

II. THE LABOR ORGANIZATIONS INVOLVED

It is admitted and I find that Respondent Pattern Makers' League, Respondent Rockford Association, and Respondent Beloit Association are and have been at all times material herein labor organizations within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Issues*

The principal issues raised by the pleadings are (1) whether Respondent Unions violated Section 8(b)(1)(A) of the Act by fining employees for returning to work during the course of a strike, after said employees had been expelled from or had tendered resignations to their respective Respondent Unions; (2) whether Respondent Beloit Association violated Section 8(b)(1)(A) and Section 8(b)(2) of the Act by attempting to cause an employer to discharge employees for their failure to join the Union; and (3) whether Respondent Unions threatened members in violation of Section 8(b)(1)(A) of the Act.

B. *The Facts*

On or about May 5, 1977, Respondents Rockford and Beloit Associations commenced a strike against the Pattern Jobbers Association and its individual members. The strike ended on or about December 19, 1977, when negotiations culminated in a new collective-bargaining agreement. Between September 11 and December 2, 1977, approximately 11 employees individually tendered written resignations to their respective Respondent Unions, and thereafter returned to work for their employers.

On September 11, 1977, William Kohl became the first member to tender his resignation. On September 12, 1977, apparently the date Kohl returned to work, he was expelled from membership by Respondent Beloit Association. On September 26, 1977, four additional employees tendered their written resignations, and thereafter Respondent Unions received letters of resignation from approximately six additional individuals.[1] Apparently, only Kohl was expelled from membership.[2] Pursuant to League Law 13 of Respondent Pattern Makers' League of North America[3] the remaining resignations were not accepted by Respondent Unions, and each individual was thereafter notified of this action in writing by letter dated January 26, 1978, which letter also advised that at a special meeting held on January 23, 1978, a substantial fine, approximately commensurate with his earnings, had been levied against him for returning to work during a strike.[4]

Employees Kohl and John Nelson both worked for Atlas Pattern Works (herein Atlas). On January 14, 1978, Respondent Beloit Association notified Atlas that Kohl "is not a member of the Collective Bargaining Agreement under Article Union Shop," effective December 19, 1977, which makes union membership mandatory after 30 days of employment under the contract. The letter further states that "His time expires January 19, 1978, please take appropriate action to rectify this situation." And by letter dated February 1, 1978, apparently pursuant to Kohl's request, Respondent Beloit Association furnished Kohl with application forms and advised him that to gain readmission into the Union he would be required to pay back dues in the amount of $211, 3 months' dues in advance, a $500 readmission fee, and "$4,200 for damages due injury the Beloit Association for deserting the strike by returning to work." Kohl submitted an application in March or April 1978, but did not perfect his application by payment of the various amounts. He has not been discharged by his employer.

Nelson began working for Atlas in March 1977, prior to the strike, and never joined Respondent Beloit Association. He apparently worked during the strike but the record is unclear as to whether or not he first struck and thereafter returned to work. On January 17, 1978, Respondent Beloit Association sent a similar letter to Atlas also advising in identical language that Nelson had not complied with the union-security clause of the new collective-bargaining agreement, requesting that the employer "take appropriate action to rectify this situation." On the same date, Respondent Beloit Association returned to Nelson a check for union dues which he had previously submitted, stating, "Since you are not a member of this Association [the Union] can not accept any payment from you for dues you don't owe." Donald L. Hansen, business agent of Respondent Beloit Association, testified that neither he nor any union steward or official notified Nelson of his obligation to join the Union under the terms of the collective-bargaining agreement or that his

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[1] All but two of the letters of resignation are perfunctory in nature, merely advising Respondent Unions of the member's resignation. One letter contains expressions of dissatisfaction with union officers and negotiators, and in another letter the member expresses his continued belief in unions but regretfully states "it has come down to my family and a hardship."

[2] The record is unclear whether employee Lannie McDonald was also expelled.

[3] League Law 13 provides:

> No resignation or withdrawal from an Association, or from the League, shall be accepted during a strike or lockout, or at a time when a strike or lockout appears imminent.

[4] The record does not contain Respondent Beloit Association's rationale for responding to Kohl's resignation letter with immediate expulsion, rather than invoking League Law 13 against Kohl, thus prohibiting his resignation.

discharge would be requested absent compliance therewith. According to Hansen, Nelson's application for membership was approved in early February 1978, after the payment of the appropriate admittance fee and dues requirements for new members.

League Law 13 became embodied in the laws of Respondent Pattern Makers' League on October 1, 1976, after being ratified in August 1976 by the members of the various associations, including the members of Respondent Unions herein, pursuant to appropriate notice procedures. Respondents' representatives testified that League Law 13 became necessary in order to preclude defections from membership which, during the course of numerous prior strikes, caused substantial harm to the League and its members. Thus, the return to work of former members during the course of strikes resulted in the inability to negotiate successor contracts, the defunctness of associations, and the acceptance of substandard terms in collective-bargaining agreements.

According to unrebutted testimony, 43 members initially participated in the instant strike, and each was paid strike benefits while engaging in strike activity, primarily picketing, receiving between $125 and $150 per week in benefits.[5] Hansen further testified that all members are required to take an oath of membership obligating them to adhere to the "Constitution, Laws, Rules and Decisions" of the League and its associations; all members, including those who later tendered their resignations, received dues notices and all but one attended the strike vote which was conducted by secret ballot; and, as a direct result of the defection of approximately 25 percent of the initial strikers, the strike not only was prolonged but it became necessary to accept a contract embodying substandard wages and benefits.

A joint meeting of Respondent Unions was held in September 1977[6] and was attended by about 50 to 60 members. Employee Donald Carlson testified that, during a question and answer session, a question was asked regarding what would happen should an employee cross the picket line and return to work. During the course of the ensuing and sometimes intemperate discussion, the general president of Respondent Pattern Makers' League, Charles Romelfanger, stated that "There has been instances where people crossing picket lines have ended up with broken arms and broken legs from doing such." During further discussion regarding an employee's pension, International Vice President Jack Gabelhausen mentioned a prior strike situation elsewhere, advising that a member had been either suspended or had resigned during the strike and had thereafter applied to get back in the Union. Gabelhausen went on to state that the individual had been assessed a fine of $15,000, and that until such a fine was paid his pension would decrease year by year until nothing was left of it.[7]

Employee David Darling testified that during the course of the aforementioned meeting Walter Bunk, financial secretary and business manager of Respondent Rockford Association, was asked what would happen if somebody crossed the picket line and returned to work. Bunk said, "Well, it has been known that some car and house windows have been broken." Darling asked if Bunk's remarks constituted a threat and Bunk replied, "Take it for what it is worth."[8]

Employee Fred Bull, then an executive board member of Respondent Beloit Association, testified that at the joint executive board meeting immediately following the aforementioned September 1977 general membership meeting, Romelfanger, who was asked what would happen if other employees crossed the picket line, replied to those present, including 12 employees, that he had known it to happen that sometimes employees could end up with broken arms or broken legs. Also, Bull testified that at another executive board meeting on October 10 or 11, 1977, Gabelhausen said, "For every day that these men work in non-union shops, they would lose a day of their pensions."

C. *Analysis and Conclusions*

In *Local 1384, United Automobile, Aerospace, Agricultural Implement Workers, UAW (Ex-Cell-O Corporation)*,[9] the Board summarizes the applicable law governing a union's fining of members for returning to work during the course of a strike as follows:

> Under the Supreme Court's *Granite State* decision,[10] these employees were not bound to observe the strike for its duration merely by virtue of their status as union members at the strike's inception, and their return to work was protected by Section 7 if they first lawfully resigned. If they had not resigned and therefore were still union members at the time they returned to work, they would have remained within the ambit of the Union's control.[29] Thus, the exercise of the Section 7 right to return to work during a strike which had commenced while an employee was a union member is restricted to the extent that the member must first resign.

The Board majority in *Ex-Cell-O* found it unnecessary under the circumstances therein to "rule on the question of what, if any, provision in a union's constitution or bylaws limiting the time or manner of resignation would pass muster under the Act," but enunciated certain stand-

[5] However, Pattern Makers' League Law 35, clause 3, states that the monetary assistance benefit for strikers shall be only $40 per week. There is no record evidence clarifying this apparent discrepancy.

[6] The precise date of the meeting is unclear.

[7] Gabelhausen admitted stating that crossing a picket line and "possibly creating a non-union shop" could ultimately effect employees' pensions.

[8] Bunk admitted that he may have mentioned that windows are broken and cars damaged during the course of strikes, but testified that these statements were not uttered as threats. Similarly, Bunk stated that Romelfanger mentioned "broken arms . . . things like that" but only in the context of describing what sometimes occurs during a strike, and not in a threatening manner.

[9] 227 NLRB 1045 (1977).

[10] *N.L.R.B.* v. *Granite State Joint Board, Textile Workers Union of America Local 1029, AFL-CIO [International Paper Box Machine Co.]*, 409 U.S. 213 (1972).

[29] *N.L.R.B.* v. *Allis-Chalmers Manufacturing Co.*, 388 U.S. 175 (1967).

ards which must be met in order to provide the mandatory "reasonable accommodation" between the often conflicting interests of the union and its members during a strike. Thus, the Board majority in interpreting and applying Supreme Court decisions states that any rule imposing restraints on members' rights to resign during a strike must be precisely tailored to the union's needs and therefore no broader than necessary to serve the union's legitimate interests, and must accord "weight to the competing considerations which may *necessitate* resignation during a strike," such as economic hardship.[11] (Emphasis supplied.)

There is no contention by the General Counsel that League Law 13 was improperly enacted or that the members who tendered their resignations were unaware of the restrictions on resignation imposed therein. While there are various infirmities inherent in League Law 13 or in the failure of Respondent Unions to uniformly apply it to all members who tendered their resignations,[12] it is clear that this law fails to comply with the Board's standard enunciated in *Ex-Cell-O* that such a provision must accord weight to circumstances necessitating resignation during a strike. The blanket prohibition of resignations or withdrawals during strikes embodied in League Law 13 permits of no exceptions or qualifications, obviously according no weight whatsoever to the competing considerations often confronting striking employees. Thus, I find that League 13 is an impermissible encroachment on employees' statutory right to resign union membership and that the fines imposed thereunder are in violation of the Act. *Local 1384 United Automobile, Aerospace, Agricultural Implement Workers (Ex-Cell-O Corporation), supra.* But cf. *Machinists Local 1327, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 115 (Dalmo Victor), supra*, and the dissenting opinions therein.

During the course of discussing possible methods of dealing with anticipated resignations of union members, President Romelfanger voiced his agreement and elaborated upon the statement of one member, who remarked that some of the men on the picket line could get pretty hostile, adding that it had sometimes happened that strikebreakers end up with broken arms or broken legs. Similar statements were made, in similar contexts, by Vice President Gabelhausen and Business Manager Bunk at various union meetings. Further, it was, at the least, strongly suggested by Gabelhausen that employees would lose a day of pension benefits to which they were entitled for each day they worked during the strike.

I find that the statements attributed to Romelfanger, Gabelhausen, and Bunk, were made substantially as witnesses Carlson, Darling, and Bull so testified. Regardless of whether the various union officials intended their remarks to be taken as direct threats of reprisal, such statements are reasonably subject to such interpretation, particularly in the context described above.[13] Further, no effort was made by any union official to dispel such reasonable beliefs.[14] Moreover, when Bunk was asked whether his remarks concerning broken windows and damage to cars of employees constituted a threat, Bunk replied, "Take it for what it is worth," clearly indicating that indeed such was the case. I find that the aforementioned statements constitute conduct violative of Section 8(b)(1)(A) of the Act as alleged. See *Service Employees International Union, Local 254, AFL-CIO (Massachusetts Institute of Technology)*, 218 NLRB 1399 (1975); *Progressive Mine Workers of America, District No. 1 (Sherwood-Templeton Coal Company, Inc.)*, 188 NLRB 489 (1971).

The General Counsel submits that the letters from Respondent Beloit Association to Atlas, the employer of Kohl and Nelson, were requests for the discharge of these employees for failure to comply with the union-security provisions of the new contract. Further, the General Counsel maintains that by making such a request to the employees' employer, Respondent Beloit Association breached a fiduciary duty to deal fairly with the employees affected, which duty, at a minimum, requires that a union inform the employee of his obligations under a union-security provision in order that he may protect his job tenure.

Hansen testified that the letters to Atlas regarding Kohl and Nelson were designed to prompt Atlas to, in turn, cause Kohl and Nelson to comply with the contract's union-security provision.[15] The letter regarding Nelson was sent to Atlas 3 days prior to the time that Respondent Beloit Association could have requested his immediate discharge, and was not inconsistent with Han-

[11] See *Granite State Joint Board, supra; Scofield* v. *N.L.R.B.*, 394 U.S. 423 (1969). See also *Local Lodge No. 1994, International Association of Machinist and Aerospace Workers, AFL-CIO (O.K. Tool Company, Inc.)*, 215 NLRB 651 (1974); *General Teamsters Local 439, International Brotherhood of Teamsters, Chauffeurs, Warehousemen & Helpers of America (Loomis Courier Service, Inc.)*, 237 NLRB 220 (1978).

[12] Thus, it appears that this law would prohibit resignation or withdrawals during strikes by members who are leaving the industry or who may have secured jobs with other nonstruck employers, and would further prohibit resignation even if the strike were unprotected. See *Communications Workers of America, AFL-CIO, Local 1127 (New York Telephone Company)*, 208 NLRB 258 (1974). Further, the language precluding resignations when a strike "appears imminent" is so vague and susceptible to such varying interpretation as to severely limit the statutory right of members to resign even prior to a strike vote and possibly even prior to the commencement of negotiations. Such indefinite limitations placed upon an employee's statutory right to resign may run afoul of the Board's requirement that in order for such limitation to be binding, a member must have actual knowledge of or have indicated his consent to be bound by his contractual commitment *vis-a-vis* the Union. See *Ex-Cell-O Corporation, supra; Loomis Courier Service, Inc., supra.* It would appear that such a requirement presupposes some particularity regarding these commitments so that a member may timely and effectively resign. Compare the constitutional prohibition in *Machinists Local 1327, International Association of Machinists and Aerospace Workers, AFL-CIO, District Lodge 115 (Dalmo Victor)*, 231 NLRB 719 (1977). Moreover, by couching the member's obligation in such uncertain terms, the Union may have breached a fiduciary duty to "deal fairly" with employees whom the Union represents. See *Loomis Courier Service, Inc. supra* at 223. Finally, Respondent Unions did not consistently invoke and perhaps waived their "right" to invoke League Law 13. Thus, as noted above, William Kohl was the first member to tender his resignation. He was expelled from membership immediately thereafter, prior to the other individuals involved herein having tendered their resignations. Under such circumstances, the remaining employees would quite reasonably believe that, similarly, League Law 13 would not be invoked to prohibit their resignations. Indeed, the record shows no notification to them that their resignations were unacceptable until January 26, 1978, well after the conclusion of the strike and months after the tenders of resignation.

[13] *American Lumber Sales*, 229 NLRB 414, 416 (1977).

[14] See *Liberty Nursing Homes, Inc.*, 236 NLRB 456 (1978).

[15] The record does not contain the wording of the union-security provisions.

sen's testimony regarding the purpose of the letter. Upon the expiration of the appropriate period, the record shows no attempt to cause the discharge of Nelson. Further, the record strongly indicates that Nelson was aware of his obligations; indeed Nelson had previously tendered a check for dues prior to his becoming a member. Most importantly, the job tenure of Nelson was not disrupted in any fashion, and he continued in the employ of Atlas and thereafter became a member of Respondent Beloit Association. Based upon the foregoing, I find the record evidence insufficient to support the complaint allegation that Respondent Beloit Association unlawfully attempted to cause Atlas to discharge Nelson. Nor does it appear that Respondent Beloit Association breached a fiduciary duty to Nelson.

However, the facts regarding Kohl are quite different. It is not in dispute that Respondent Beloit Association expelled Kohl from membership immediately upon receiving his letter of resignation. Thereafter, Respondent Beloit Association sent a letter to Atlas urging that Kohl comply with the union-security provisions of the contract by becoming a member of said Union. However, unlike the treatment of Nelson, Respondent Beloit Association thereupon erected a barrier to Kohl's compliance with the contract requirements by conditioning his membership in the Union upon the payment of substantial sums for back dues obviously imposed for periods during which Kohl had no dues obligation,[16] a readmission fee of $500, and an additional amount of $4,200 for damages. It is clear that all such amounts were imposed as a penalty for conduct in which Kohl was engaged after having effectively resigned his union membership. Therefore, having conditioned membership, mandatory under a valid union-security clause, upon the payment of such apparently unprecedented and excessive amounts and by attempting to cause the employer to seek Kohl's compliance therewith upon the implicit threat of discharge, Respondent Beloit Association has violated Section 8(b)(1)(A) and (2) of the Act.[17] *International Association of Machinists and Aerospace Workers, District No. 71 (Whitaker Cable Corporation)*, 224 NLRB 580 (1976); *Local 1936, Brotherhood of Railway, Airlines and Steamship Clerks, etc., AFL-CIO (NCR Corporation)*, 229 NLRB 243 (1977); *Business Machine Technicians and Engineers Section, Brotherhood of Railway, Airline and Steamship Clerks, etc., AFL-CIO (NCR Corporation)*, 235 NLRB 666 (1978).

[16] According to the Laws of the Pattern Makers' League, 3 months advance dues are customarily required of new members.

[17] While the complaint alleges only the unlawfulness of the fine, I find that the back dues and excessive readmission fee required of Kohl as a condition of becoming a member of the Union are likewise tantamount to unlawfully imposed fines. Whether Respondent Beloit Association could lawfully impose a reasonable readmission fee based on nondiscriminatory considerations is a matter properly left for the compliance stage of this proceeding. See *Metal Workers' Alliance, Incorporated (TRW Metals Division, TRW, Inc.)*, 172 NLRB 815 (1968).

CONCLUSIONS OF LAW

1. The Pattern Jobbers Association is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Respondents Pattern Makers' League of North America, AFL-CIO, Rockford Association, and Beloit Association are labor organizations within the meaning of Section 2(5) of the Act.

3. By maintaining as an obligation of membership and by invoking League Law 13 against members, which law unreasonably precludes members' effective resignation during a strike or when a strike appears imminent, Respondents have violated Section 8(b)(1)(A) of the Act.

4. By imposing fines against former members who had duly resigned prior to returning to work during the course of a strike, Respondents have violated Section 8(b)(1)(A) of the Act.

5. By conditioning admission in the union, under the terms of a union-security clause, upon the payment of excessive back dues, an excessive readmission fee and a fine, and concomitantly attempting to cause an employer to seek an employee's compliance therewith, Respondent Beloit Association has violated Section 8(b)(1)(A) and (2) of the Act.

6. By threatening employees with reprisals in the form of physical harm or loss of accrued pension benefits, Respondents have violated Section 8(b)(1)(A) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) of the Act.

THE REMEDY

Having found that Respondents engaged in certain unfair labor practices, I recommend that they be required to cease and desist therefrom. In order to effectuate the purposes of the Act, I shall also recommend that Respondents Beloit Association and Rockford Association rescind the fines unlawfully imposed, and expunge from the records of said employees any reference to fines levied against them for postresignation conduct; and that Respondent Beloit Association rescind the other excessive monetary penalties imposed against William Kohl as a condition of his regaining union membership.

Further, I shall recommend that League Law 13 be expunged from the laws of the Pattern Makers' League of North America. League Law 13 unequivocally prohibits resignations during the course of a strike or when a strike appears to be imminent and, as found herein, is unlawful. As the law is subject to no lawful interpretation and as it may inhibit employees, unaware of its unenforceability from exercising their Section 7 rights to resign during the course of or prior to a strike, it appears necessary under the circumstances that League Law 13 be excised from the League's body of laws.

[Recommended Order omitted from publication.]